This record is a partial extract of the original cable. The full text of the original cable is not available.

101042Z Mar 05

ACTION EAP-00

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INFO  LOG-00   AID-00   CA-00    CEA-01   CIAE-00  CTME-00  INL-00
      DODE-00  ITCE-00  DOTE-00  EB-00    EXME-00  E-00     FAAE-00
      FBIE-00  UTED-00  VC-00    FRB-00   TEDE-00  INR-00   IO-00
      VCE-00   MOFM-00  MOF-00   AC-00    NSAE-00  NSCE-00  OES-00
      OIC-00   OMB-00   ACE-00   CFPP-00  SP-00    SSO-00   SS-00
      STR-00   TRSE-00  FMP-00   BBG-00   IIP-00   DRL-00   G-00
      NFAT-00  SAS-00    /001W
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FM AMEMBASSY HANOI
TO SECSTATE WASHDC IMMEDIATE 6958
INFO USDA WASHDC
USDOC WASHDC
AMCONSUL HO CHI MINH CITY
ASEAN REGIONAL FORUM COLLECTIVE
USMISSION GENEVA

UNCLAS HANOI 000585

SIPDIS

SENSITIVE

STATE PLEASE PASS TO USTR EBRYAN
STATE ALSO FOR E, EB AND EAP/BCLTV
STATE ALSO PASS USAID FOR CHAPLIN/ANE
USDOC FOR 4430/MAC/ASIA/OPB/VLC/HPPHO
USDA FOR FAS/ITP/SHEIKH
GENEVA FOR USTR

E.O. 12958: N/A
TAGS: ETRD ECON VM
SUBJECT: Vietnam: Implementation of BTA Customs Valuation Obligation

Sensitive but Unclassified -- Please protect accordingly.

Ref (A) 04 HANOI 980

¶1. (SBU) Summary: The GVN has made strong efforts to implement the U.S.-Vietnam Bilateral Trade Agreement (BTA) obligation to adopt a system of customs valuation based on the transaction value of the imported merchandise - in accordance with the WTO Customs Valuation Agreement (CVA). The GVN is now applying the CVA to more than 90 percent of its imports, on goods from more than 50 countries, including the United States. The few complaints Mission has heard from companies about non-application of CVA appear to be isolated incidents. However, just over a year after implementation began, GVN Customs officials are struggling to address concerns regarding declining revenues and under-invoicing. Corruption and lack of human and technical capacity within Customs remain serious problems. The World Bank is planning a USD 75 million loan for customs modernization. End summary.

GVN Implements Transaction Value

¶2. (SBU) According to the terms of the BTA, the GVN was obligated by December 10, 2003 to adopt a system of customs valuation based on the transaction value of the imported merchandise (rather than arbitrary reference or minimum prices), in accordance with the Agreement on Implementation of Article VII of the GATT 1994 (i.e. the Customs Valuation Agreement or CVA). A June 2002 Government Decree (60), a December 2003 Ministry of Finance (MOF) Circular (118) and multiple official letters have effectively established the legal framework for implementing the CVA. Although initially Vietnam only planned to apply CVA to goods originating from the United States and ASEAN, the GVN has phased in application of CVA to goods from 52 countries including China on a reciprocal basis over the last year. Currently, according to the General Department of Customs (GDC), Vietnam applies CVA to about 90 percent of all imports. Also, although in early 2004 the MOF decided to continue using minimum prices to determine customs duties for seven categories of goods (reftel A), this decision was reversed in March 2004. No minimum prices for goods remain.

Declining Revenues

¶3. (SBU) GDC Officials from Hanoi told Econoff in mid-February that CVA implementation had resulted in a decline in the amount of customs revenues collected. While reticent to state a specific figure, the Deputy Director of the Tax Collection Department estimated implementing the CVA has resulted in a 15 to 20 percent reduction in revenues. For

Vietnam, import and export taxes contribute about 12 percent of total revenues (Note: This is a MOF estimate. Other estimates indicate this figure could be as high as twenty percent. End Note.)

The Search for Real Prices

¶4. (SBU) GDC officials also emphasized their concern that under the CVA, there is widespread under-invoicing of high value goods, including imports from the United States. Under the current system, customs officials accept the declared value of shipments at the port, but can then seek clarification of the declared value from the importers within 15 days. However, GDC officials complained, Vietnam has limited information to verify the accuracy of the importers' declared prices. Customs has been working to upgrade its reference "price bank" but is having difficulty getting good information on a number of products such as wine, automobiles, cosmetics and motorcycles. Customs officials noted that the values of U.S. goods imported into Vietnam via third countries are particularly difficult to assess. According to the GDC, some U.S.-origin goods shipped via third countries have been imported into Vietnam with invoice prices up to 50 percent lower than the "real prices." GDC officials acknowledged that Vietnam's "fairly high" duty rates encourage importers to under-invoice.

¶5. (SBU) In November 2004, the GDC issued a decision (1361) outlining procedures for requesting consultations with importers regarding declared invoice prices. Soon after, Customs began issuing written requests for consultations to companies importing high-value items. (Note: These consultations were essentially unnecessary prior to CVA implementation because Customs applied import duties based on reference or minimum prices. End Note.) According to the Director of the Tariff Valuation Section of HCMC Customs, factors such as shipment size, value of the imported goods and significant differences between declared values and reference prices are factors that trigger a request for consultations. Officials from HCMC Customs, which handles about 60 percent of all of Vietnam's imports, estimated that they have requested consultations with approximately ten percent of importing companies in the last few months. In about two percent of the cases, the companies failed to substantiate the declared invoice prices. Fifty cases have been referred to the Post-Clearance Audit Section for further investigation.

¶6. (SBU) Econoffs spoke with a number of importers to discuss implementation of CVA in Vietnam. For the most part, importers concur that the legislative framework the GVN put in place a year ago has established a solid foundation for applying CVA in Vietnam. However, importers expressed concern over Customs' recent efforts to improve verification of declared invoice prices, highlighting the lack of training of customs officials. Importers also acknowledged that CVA implementation has not made a significant impact on the level of corruption within Customs. Most importers (or the importing agents they hire) still routinely pay "facilitation fees" at each stage of the clearance process.

¶7. (SBU) The Director of Tan Khoa Trading Company, a HCMC wine and spirits importer, told Econoff that HCMC Customs has asked for consultations on every container his company has imported since January. Each time, HCMC Customs asked Tam Khoa to provide documentation supporting the declared invoice price for his shipments, including copies of bank documents, contracts, written price confirmations from suppliers, and invoices for sale of the goods in Vietnam. At least two of these requests for consultations have been on repeat shipments of the same kind of goods. To date, Customs has concurred with Tan Khoa's declared invoice prices and not required payment of additional duties. However, according Tam Khoa's Director, these consultations are a drain on the company, as his employees have to spend significant time copying the documents and meeting with customs officials.

¶8. (SBU) HCMC Customs has also requested consultations with Thicopha Co., a Vietnamese private company that imports U.S. processed food (including products from Hershey, Sunmaid, Keebler, Post, and Welch's.) However, Customs has only requested consultations on three of Thicopha's shipments. These shipments contained chocolate and raisins, which are considered higher valued goods. HCMC Customs has not focused on Thicopha's other shipments of "lower-value" goods including cereal, tortilla chips, and juice. After consultations on the declared value of the three disputed containers, HCMC Customs determined that Thicopha's declared invoice price was too low and calculated that the company owes about USD 100,000 in import duties and VAT taxes on the three containers. (Note: One of these containers had a declared invoice value of just over USD 13,000 or USD 1.5

per kilo. Thicopha paid about USD 8,700 in customs duties and VAT on this container. However, HCMC Customs claims the real invoice price should be USD 6 per kilo plus VAT and that Thicopha owes about USD 33,000 in taxes and tariffs on this container. End Note.) Thicopha is currently waiting for a written request from HCMC Customs for payment of the additional taxes and duties. The Chairman of Thicopha plans to contest the decision. At the same time, the company has delayed shipment of additional containers of chocolate and raisins until its issues with Customs are resolved.

¶9. (SBU) While the directors of both Tan Khao and Thicopha said they did not feel they have been singled out by

Customs, both were clearly very unhappy with the consultation process. The Director of Tan Khoa expressed frustration that his company's good record with HCMC Customs has not resulted in fewer requests for consultations. Tan Khoa, a private domestic company that has been in business since 1986, pays about VND 21 billion (more than USD 1.3 million) in taxes each year. For several years, HCMC Customs has commended Tan Khoa for being a good taxpayer. However, on shipment after shipment, Tan Khoa is required to provide additional documentation on its declared invoice prices. The Director believes that Customs officials need additional training and information on the products they are dealing with so they are better prepared to handle clearance of shipments. The chairman of Thicopha noted that while he has not been asked for a bribe, he speculated that if he offered to pay off the officials in charge of his case, his tax bill would disappear.

Post Clearance Audit

¶10. (SBU) According to officials from HCMC Customs, when disputes over declared invoice prices are not resolved through the consultation process, they are referred to the Post Clearance Audit (PCA) office for investigation and resolution. If the local PCA office cannot resolve the dispute, it is then referred to the central PCA office at the GDC in Hanoi. Article 32 of the Customs Law and a December 2001 Government Decree (102) provide the existing legal framework for conducting post-clearance audits. (Note: The Customs Law was promulgated in late 2001 and went into effect in 2002. End Note.) Customs has about 200 officials assigned to handle post-clearance audits in Hanoi and in post-clearance units in provincial customs offices throughout the country. They are tasked with inspecting possible violations of the Customs Law at any time within five years of the date goods clear customs. The PCA does not operate on a risk management basis; audits are not conducted randomly and are not used to deter fraud. Rather, post-clearance inspections only take place if Customs has reason to suspect that a violation of the regulations has taken place.

¶11. (SBU) According to Customs officials and a variety of technical assistance providers, reforming Vietnam's post-clearance audit system is one of the primary objectives of GVN efforts to revise the Customs Law. The National Assembly is currently scheduled to approve amendments to the Customs Law at its May 2005 session. However, it appears very likely that this date will slip to November 2005. Vietnam is receiving significant technical assistance revise the Customs Law, including from the USAID-funded Support for Trade AcceleRation (STAR) project, Japan International Cooperation Agency (JICA) and the World Bank (WB).

Other Customs-Related Obligations

¶12. (SBU) In addition to CVA implementation, the BTA has several other customs-related obligations such as implementing and enforcing border measures to protect intellectual property rights (IPR). Articles 57-59 of the Customs Law authorize Customs to protect IPR at the border. A December 2003 Circular (101) and a December 2004 Circular (129) provide more detailed guidance on border enforcement. However, IPR enforcement at the border (and generally throughout Vietnam) remains weak.

¶13. (SBU) The BTA also obligates Vietnam to establish procedures to review administrative decisions, including on customs issues. According to the BTA, these procedures must include an opportunity to appeal to an administrative body and then, if necessary, to a judicial body. Vietnamese law currently does not support this obligation because cases that are appealed administratively cannot subsequently be appealed judicially. The GVN, with assistance from STAR, is currently considering how to bring the Law on Complaints and Denunciations into conformity with BTA obligations on administrative review.

Customs Modernization

¶14. (SBU) In March 2004, the MOF approved a "Strategic Plan for customs Reform and Modernization for 2004-2006." (Note: some of the goals and objectives of this plan extend out to ¶2010. End Note.) The Strategic Plan document acknowledges shortcomings in customs operations including: the low level of skills and expertise of customs officials, obsolete and insufficient information technology systems, corruption, and insufficient post-clearance audit procedures. The Strategic Plan focuses on five primary areas for reform: institution building; upgrading information technology and equipment, reforming organizational structure, training and human resource development and upgrading facilities and infrastructure. Some of the specific goals cited in the strategy document include: moving to a management system based on risk management techniques; reforming and standardizing customs procedures; automating customs procedures for 95 percent of goods; reforming personnel management including recruitment, training and retention of staff. An advisory committee, chaired by a Vice Minister of Finance and including representatives of the MOF, GDC and related line ministries, is overseeing the customs reform effort.

¶15. (SBU) The World Bank is currently finalizing plans to provide an approximately USD 75 million dollar loan to the GVN for customs modernization. The "Vietnam Customs Modernization Project" (VCMP) will be implemented over five years, from June 2005 to December 2010 and will seek to strengthen the capacity of Customs by 1) introducing modern systems and procedures based on international practices; 2) improving the organizational structure and strengthening the human, financial, and physical resource capacity of the GDC and 3) updating the GDC's information and communication technology systems. World Bank representatives have worked closely with USAID, JICA, the IMF, the Asian Development Bank and the EU to develop the project proposal.

¶16. (SBU) Comment: The GVN should be praised for its efforts to put in place a solid legal framework for implementing the CVA. With the help of significant technical assistance from a variety of donors, the GVN is moving forward with broad customs modernization and reform and should be encouraged in these efforts. Mission will continue to look for opportunities in which the USG can provide additional assistance.

MARINE

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